IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1405 of 2002.

Judgment reserved on: 19.4.2007.

Decided on: April , 2007.

B.L. Negi.

… … … Petitioner.

Versus

Union Bank of India

… … … Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? Yes.

For the petitioner: **Mr. P.C. Sharma, Advocate.**

For the Respondent: **Sh. N.K. Sood, Advocate.**

Rajiv Sharma, Judge:

Mr. P.C. Sharma after arguing the matter for some time has prayed that he is confining his challenge to the appellate order (Annexure P-9), dated 31st July, 2002. Mr. P.C. Sharma submits that against the major penalty of dismissal imposed upon the petitioner by the disciplinary authority, he had preferred appeal to the appellate authority as per Regulation 17 of the Union Bank of India Officer Employees' (Conduct) Regulations, 1976 (hereinafter referred to as the "Regulations"). The petitioner has not placed on record the copy of

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Whether reporters of local papers may be allowed to see the judgment? Yes.

appeal, but has produced the same for perusal of this Court during the course of arguments.

Mr. P.C. Sharma has contended that the appellate order dated 31st July, 2002 is neither reasoned nor speaking. Mr. Sharma further contended that as per Regulation 17 of the Union Bank of India every ground taken in the appeal was to be considered and thereafter reasoned order was required to be passed.

Mr. N.K. Sood, learned counsel appearing on behalf of the Bank-respondent has vehemently contended that the appellate order dated 31st July, 2002 is in accordance with law and may not be interferred by this Court.

Regulation 17 of the Union Bank of India Officer Employees' (Conduct) Regulations, 1976 is reproduced below for better appreciation of the submission made by Mr. P.C. Sharma: -

"17. Appeals:

(i) An Officer Employee may appeal against an order imposing upon him any of the penalties specified in Regulation 4 or against the order of suspension referred to in Regulation 12. The appeal shall lie to the Appellate Authority.

(ii) An appeal shall be preferred within 45 days from the date of receipt of the order appealed against. The appeal shall be addressed to the Appellate Authority and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the Appellate Authority. The Appellate

Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that –

(i) **if the enhanced penalty which the Appellate Authority proposes to impose is a major penalty specified in clauses (f), (h), (i) and (j) of Regulation 4 and the inquiry as provided in Regulation 6 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provisions of Regulation 6 and thereafter consider the record of the inquiry and pass such orders as it may deem proper;**

(ii) **if the Appellate Authority decides to enhance the punishment but an enquiry has already been held as provided in Regulation 6, the Appellate Authority shall give a show cause notice to the Officer Employee as to why the enhanced penalty should not be imposed upon him and shall pass final order after taking into account the**

representation, if any, submitted by the Officer Employee."

I have gone through the grounds of the appeal as produced by Mr. P.C. Sharma and the appellate order dated 31st July, 2002. I am of the opinion that the order dated 31st July, 2002 does not conform to Regulation 17 of the Union Bank of India as reproduced above. Hon'ble Supreme Court in "R.P. Behal v. Union of India 1986 (2) SCC, 654" had the occasion to explain the term 'consider' while dealing with the appellate order passed by the appellate authority in disciplinary proceedings. Your Lordships of Hon'ble Supreme Court has held as under:-

"**4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the term of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing, etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.**

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in

violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) or Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

Similarly, Hon'ble Supreme Court has held in "Narinder Mohan Arya versus United India Insurance Co. Ltd. And Others (2000) Vol. 4 SCC 713 that the order passed by the Appellate Authority should be reasoned order. Your Lordships has opined as under:-

"**31. We may for the aforementioned purpose take note of the extant rules operating in the field. Requirements of consideration in an appeal from an order of the disciplinary authority by the Appellate Authority is contained in Rule 37 whereas the provisions as regards filing of a memorial are contained in Rule 40 thereof, which read as under:**

"37. *Consideration of appeals*.-(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the other accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

"40. *Memorial*. – An employee whose appeal under these Rules has been rejected by the Chairman/Chairman-cum-Managing Director or in whose case such Appellate Authority has enhanced the penalty either on appeal under Rule 24 or on review under Rule 39(2) may address a memorial to the Chairman/Chairman-cum-Managing Director in respect of that matter within a period of 6 months from the date the appellant received a copy of the order of such Appellate Authority.

32. The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter partes was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted

upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

The appellate order should always be a speaking and reasoned since the same is to be judicially reviewed by the Courts. There has to be due application of mind by the appellate authority and it must ensure that the disciplinary proceedings are held in accordance with law and the procedure prescribed therein has been followed. Since the order dated 31st July, 2002 has been passed without following the procedure as per Regulation 17 of Union Bank of India Officer Employees' (Conduct) Regulation, 1976 and is also not in conformity with the law laid down by your Lordships in two judgments cited hereinabove, the order dated 31st July, 2002 is liable to be quashed and set aside. Accordingly, the writ petition is partly allowed and the respondents are directed to re-hear the appeal and while doing so, the petitioner shall also be afforded the

opportunity of personal hearing and the grounds mentioned in appeal will be duly considered within a period of four weeks from today.

There shall be no order as to costs.

(Rajiv Sharma)
Judge

April , 2007.
(sck)